



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9962]

RIN 1545-BQ06

User Fees Relating to the Enrolled Agent Special Enrollment Examination and the Enrolled Retirement Plan Agent Special Enrollment Examination

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These final regulations amend existing regulations relating to the user fees for the special enrollment examinations for enrolled agents and enrolled retirement plan agents. The final regulations increase the amount of the user fee for each part of the special enrollment examination for enrolled agents (EA SEE). The final regulations also remove the user fee for the special enrollment examination for enrolled retirement plan agents (ERPA SEE) because the IRS no longer offers the ERPA SEE or new enrollment as an enrolled retirement plan agent. The final regulations affect individuals taking the EA SEE. The Independent Offices Appropriation Act of 1952 authorizes charging user fees.

DATES: Effective date: These regulations are effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For the date of applicability, see § 300.4(d).

FOR FURTHER INFORMATION CONTACT: Karen Wozniak at (202) 317-5129 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 300 regarding user fees. On September 29, 2021, a notice of proposed rulemaking (REG-100718-21) and notice of public hearing was published in the **Federal Register** (86 FR 53893). The notice proposed amending the regulations relating to the user fees for the EA SEE and ERPA SEE. The notice proposed increasing the amount of the user fee for each part of the EA SEE from \$81, plus an amount payable to a third-party contractor, to \$99, plus an amount payable to a third-party contractor. The notice also proposed removing the user fee for the ERPA SEE. The notice contains a detailed explanation regarding the amendments to these regulations.

Two comments responding to the notice were received. There were no requests to speak at the scheduled public hearing. Consequently, the public hearing was cancelled (86 FR 66496). After consideration of the written comments, the Department of the Treasury (Treasury Department) and the IRS have decided to adopt without modification the regulations proposed by the notice.

Summary of Comments

The two comments submitted in response to the notice of proposed rulemaking are available at www.regulations.gov or upon request.

The two commenters expressed concern that the proposed EA SEE user fee would be used to fund the program for enrollment and renewal of enrolled agents in addition to recovering the IRS's cost of overseeing the EA SEE. One commenter stated that the program for enrollment and renewal of enrollment of enrolled agents should be funded by enrollment and renewal fees -- not the EA SEE user fee -- and recommended increasing the enrollment and renewal fees instead of increasing the EA SEE user fee. The second commenter expressed agreement with this comment.

Under Office of Management and Budget (OMB) Circular A-25, 58 FR 38142 (July 15, 1993) (OMB Circular A-25), Federal agencies that provide services that confer

benefits on identifiable recipients are to establish user fees that recover for the government the full cost of providing the service. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. Under OMB Circular A-25, a user fee should be set at an amount that recovers the full cost of providing a service, unless the OMB grants an exception. The full cost of providing a service includes both the direct and indirect costs of providing the service.

As required by OMB Circular A-25, the IRS conducted a biennial review of the EA SEE user fee, during which it calculated the full cost of overseeing the EA SEE, taking into account all direct and indirect costs. In calculating the full cost of overseeing the EA SEE, the IRS followed generally accepted accounting principles established by the Federal Accounting Standards Advisory Board. The proposed EA SEE user fee only recovers the IRS's cost of overseeing the EA SEE. It does not recover costs associated with other programs. The preamble to the proposed regulations describes in detail the costs associated with overseeing the EA SEE and the IRS's calculation of the proposed EA SEE user fee.

The IRS charges a separate user fee to recover the costs it incurs related to enrollment and renewal of enrollment of enrolled agents and renewal of enrollment of enrolled retirement plan agents. That fee is currently set at \$67 per initial application and renewal. Like the EA SEE user fee, the user fees for enrollment and renewal of enrollment of enrolled agents and renewal of enrollment of enrolled retirement plan agents are also subject to biennial review under OMB Circular A-25. See REG-114209-21 in the Proposed Rules section of this edition of the **Federal Register**, separately proposing to increase the renewal user fee for enrolled retirement plan agents from \$67 to \$140 and both the enrollment and renewal user fee for enrolled agents from \$67 to \$140.

Accordingly, after consideration of the comments, the proposed regulations are adopted without change.

Special Analyses

These regulations are not significant and are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. The final regulations remove the ERPA SEE user fee as the IRS no longer offers the examination or new enrollment as an enrolled retirement plan agent. The EA SEE user fee primarily affects individuals who take the EA SEE. Only individuals, not businesses, can be enrolled agents. Accordingly, the economic impact of these regulations on any small entity would be a result of an individual enrolled agent owning a small entity or a small entity employing an enrolled agent and reimbursing the individual for the fee. The Treasury Department and the IRS estimate that an average of 22,381 EA SEE examination parts will be taken by individuals annually. Consequently, a substantial number of small entities is not likely to be affected. Further, the economic impact on any small entities affected would be limited to paying the \$18 difference in cost between the \$99 user fee and the previous \$81 user fee per part (for each enrolled agent that a small entity employs and pays for), which is unlikely to present a significant economic impact. The total economic impact of these regulations is approximately \$402,858 annually, which is the product of the approximately 22,381 examination parts and the \$18 increase in the fee per part. The rule is, therefore, not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments on the notice were received from the Chief Counsel for the Office of Advocacy of the Small Business Administration.

Drafting Information

The principal author of these regulations is Karen Wozniak, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300 – USER FEES

Paragraph 1. The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

§300.0 [Amended]

Par. 2. Section 300.0 is amended by removing paragraph (b)(9) and redesignating paragraphs (b)(10) through (13) as paragraphs (b)(9) through (12).

Par. 3. Section 300.4 is amended by revising paragraphs (b) and (d) to read as follows:

§300.4 Enrolled agent special enrollment examination fee.

* * * * *

(b) *Fee.* The fee for taking the enrolled agent special enrollment examination is \$99 per part, which is the cost to the government for overseeing the development and

administration of the examination and is in addition to the fees charged by the administrator of the examination.

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(d) *Applicability date.* This section applies to registrations for the enrolled agent special enrollment examination that occur on or after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

§300.9 [Removed]

Par. 4. Section 300.9 is removed.

§§300.10 through 300.13 [Redesignated as §§300.09 through 300.12]

Par. 5. Redesignate §§300.10 through 300.13 as §§300.09 through 300.12.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: February 24, 2022.

Thomas C. West, Jr.,

Deputy Assistant Secretary of the Treasury (Tax Policy).